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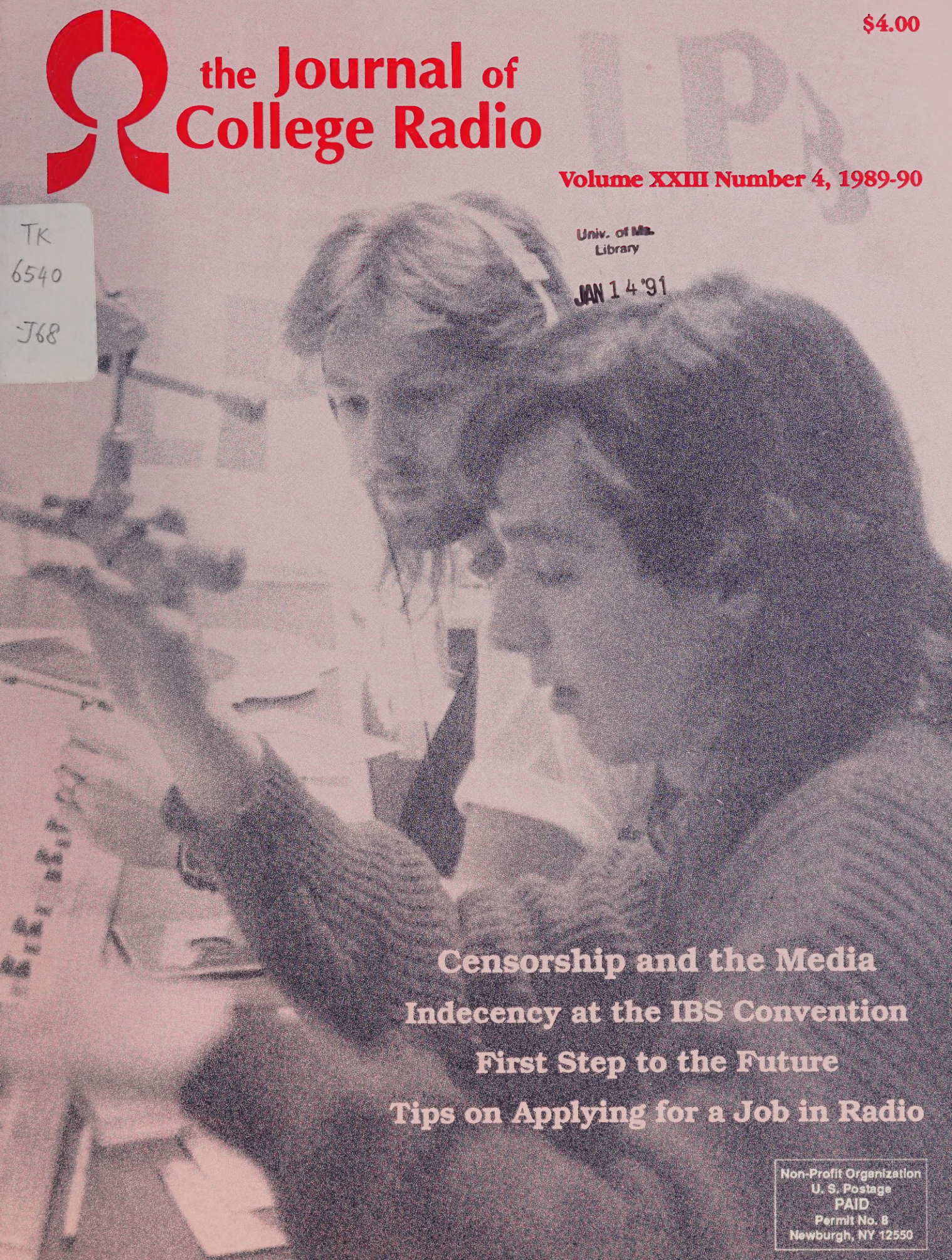

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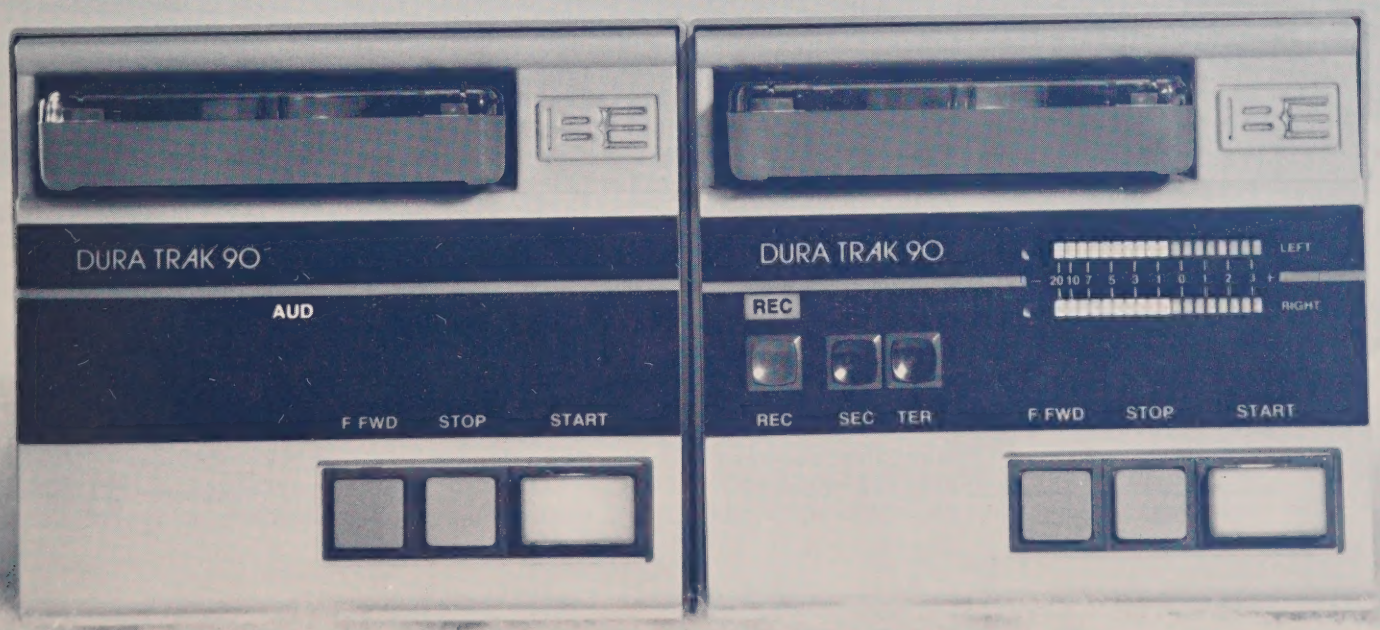

DURA TRAK 90 STEREO PLAYBACK & DURA TRACK 90 STEREO RECORD/PLAYBACK

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In This Issue:

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Cover Photo: WIBS was the IBS National Convention radio showcase for student radio stations that played one-hour samples of their best work or produced "live" air shifts which were broadcast throughout the Penta Hotel.

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The Editor's Log

It has started.

In most metropolitan areas of the country, the noncommercial FM band has become overcrowded, congested, and saturated to the point where there is simply no more room to squeeze in even one new station. Existing stations' coverage contours are packed so tightly against each other that for most, a power increase can be only wishful thinking.

While the supply of vacant, noncommercial FM dial space remains severely limited, the demand has exploded. It seems as if every college, school, religious group, community group, and other specialized interest group is trying to get a new station on the air. Existing stations, having recognized the shortage of space, have applied for power increases to extend their own coverage while they still can.

It won't be long before the new translator rules kick-in and allow noncommercial FM translators to be fed via satellite instead of being restricted to off-air pick-up of broadcast signals. Religious groups in particular are said to be waiting to file literally hundreds of applications once the new rules become effective.

Although these translators will be "secondary" facilities without protection against interference, or being "bumped" to another place on the dial, or being driven off the air entirely, (much like the remaining 10-watt noncommercial stations), on a practical basis, it will not be so easy once they're established. One of the unfortunate results of all of this congestion has been school and college stations starting to fight among themselves and with "public" radio stations, religious, and community group stations. They are all hoping to stake out as big a piece for themselves of the little spectrum space that remains.

This cut-throat competition is not the way it once was, at least in the noncommercial band. College stations who were there first tended to unselfishly help other college and community stations get started. That doesn't appear to be the case anymore. Now, it seems to be everyone-for-themselves.

Don't make the mistake of thinking, "It can't happen here." When there are no more frequencies left, what happens when a financially-strapped college is tempted by an outside group with a fat checkbook seeking to buy their radio station?

An alarming number of student-staffed college radio stations have had students removed and replaced by professionals hired to staff and program "fine-arts" stations, considered less controversial and better for the college's image. Students are then allowed to serve as interns, threading tape machines and monitoring network feeds on the board. In some cases, they may be thrown a few carrier-current transmitters as a consolation prize so their station can remain "on-the-air".

I don't have any problem with public fine-arts stations. Some do great programming and offer their audiences things they can't get elsewhere. (Perhaps like your station does for a different audience). Regardless of format, I do have a problem with one station or group trying to steamroller an existing station off the air in an attempt to take over their spot on the dial. It's just not right, especially in the noncommercial band where we're presumed to maintain at least some sense of moral principles.

In another scenario, license renewal time comes up and suddenly you find your station's license challenged by people who want to put a new station on the air and have nowhere to go.

If all of this sounds a bit scary, it is. It's not very pleasant when we turn against each other.

There are no easy ways around all of this. Dial space will continue to become more crowded and less available. If you've already got an FM license, protect it. Use the IBS FCC Checklist along with a copy of the FCC regs to make sure you're operating within all of the rules. Keep a watch on new FCC applications and have your engineer check out those that are nearby both geographically and on the FM dial.

Make sure your school or college knows what a great job you're doing. Write-up an annual report detailing what you've had on the air besides good rock'n roll.

If an application from your station has a potentially harmful effect on another station, talk to each other and see what can be worked out. It can be a lot less expensive than the legal fees needed for a full FCC hearing.

Does competition for the listener (and listener donations) have to be so heated that our stations can't help each other? As more stations seek lis-

tener support, why not try to coordinate the scheduling of radiothons so you don't go head to head against each other.

During the development of college radio, sharing information among stations was necessary and good. It still is through conventions, conferences, publications, newsletters, etc. It always amazes me how many stations wait for a convention to talk with the school or college station down the street or in the next county.

With the walls appearing to be closing in, it's time we worked a lot more with each other to help us all survive the challenges ahead.

The IBS National Convention

We at IBS wanted to just say "thanks" to all of you who were there with us in New York in March to celebrate the completion of our 50th year with college radio. Your evaluation forms have been coming back with overwhelmingly positive feedback. Here are just a few examples:

Overall, the sessions this year were the best I have experienced of the 4 IBS conventions I have attended.

Michael Reed, General Mgr.
WRSU – Rutgers University

The Station Managers panel helped form networks; the FCC Questions and Answers sesssion brought everything out in the open.

Andy Klimek, Station Manager
WKVR – Juniata College

We learned a lot and got new ideas.

Meg Weber, Music Director
KNEU – N. E. Missouri State University

On the Careers in Broadcasting panel, every speaker was excellent! The audience listened intently and felt that sense of "radio fever".

Robin Micket, Music Programmer
WHUS – University of Connecticut

All sessions I attended this year along with the speakers were excellent. This was definitely the best IBS convention I've attended.

Peter Ackarey, Program Director
WKNH – Keene State College

Production Techniques had some really neat tips to production work. This was the most interesting forum - maybe the most informative in relation to its subject.

Jen Hansen, Station Manager
KORD – Concordia College

Frankly, it's our feeling that, if you were there, enjoyed yourself and got something out of it to take back to your station, then all the time and effort put into it was well worthwhile. To those who were there, again our thanks for making it all work, and for those of you who couldn't be there this time, well, there's always next year.

The End of the Year

About the time this issue arrives, many of you will be up to here in term papers, final exams, packing and looking ahead, at least to Summer, if not beyond. At the station, new officers and department heads will have been or are about to be elected, selected, appointed or anointed. In these rushed weeks, there may have been too little time to learn much from your predecessors about how their job works. So, you may have to start again at square one and re-invent the wheel. It doesn't have to be that way.

If there's still time, make an extra effort to have your new officers and department heads sit down with the people they're replacing and learn everything they can from them. Some will be graduating, moving on or unavailable to answer the questions that are likely to come up.

If your station is on the air over the summer, you may be operating with fewer people. You may be surprised – sometimes it's actually easier with fewer people.

And, don't forget about the Fall. Although it may seem a long way off right now, you'll need to make plans for recruiting and training and replacing all of the people you know are leaving and probably a few who may have to leave unexpectedly.

Don't overlook promoting yourselves using on-air PSA's for recruiting. Another good idea is to include a printed insert about your station and available staff opportunities with one or more of the mailings your school normally sends to incoming Freshmen. You can also use these mailings to promote the station to potential new listeners. After all, some may be from out of town and have never heard of your station before.

It may sound like all of this can be ignored until September, but that's not the way it works. If you wait until then, it'll be too late. Now is the time to plan your recruiting and training so when September rolls around, you'll be ready.

In any case, whether you'll be at the station, working to get enough saved to return to school in the Fall, or just sitting on a beach somewhere, have a good Summer. And, remember, we'll be here. Should any questions or problems come up, give us a call or drop us a note and we'll be glad to try to help. ⊡ *Jeff Tellis*

A glance at the 1990 IBS National Convention

Censorship and the Media

by John E. Murphy
General Manager, WHUS-FM
Director of Station Relations, IBS

I. A Legal History

Obscenity And The Courts: 1868 To 1950

Much of our law has been derived from English law and obscenity is no exception. The most important English case on the subject was *Regina v. Hicklin*, decided in 1868. There, Lord Cockburn established a strict test for obscenity which was later adopted in the United States. The test was whether the material charged as obscene tended to deprave and corrupt those whose minds are open to such "immoral influences". The *Hicklin* test permitted courts to review isolated passages of a book, and judge them according to their harmful effects upon the most susceptible individuals. Despite some problems, the *Hicklin* test soon became the cornerstone of early American obscenity law.

The *Hicklin* test was thoroughly established in the U.S. by the beginning of the twentieth century, and it was also about this time that the test began to undergo a series of challenges in the courts.

In *United States v. Kennerly, 209 F. I 19 (1913)*, Judge Learned Hand criticized the test as being unduly harsh. He gave two reasons for his criticism. First, the test judged literature in terms of those people most vulnerable to being corrupted. Since children were the most susceptible individuals, they were used as the basis for the test. Hand stated that the test would "reduce our treatment of sex to the standards of a child's library in the supposed interest of a salacious few .... "

Hand also criticized the test because it permitted judges to isolate allegedly obscene passages from their setting as a whole. Hand reasoned that obscene material by itself might not be so obscene if it were "honestly relevant to the expansion of innocent ideas ... ." In other words, a scientific work could be banned as obscene if it so much as contained one instance of obscenity. Judge Hand simply found the test was outdated. The *Hicklin* test did not "answer to the understanding and morality of the present time ... ."

Despite his objections, however, Judge Hand applied the test because he felt he was required to by precedent; consequently, the test remained an effective force in 20th century obscenity law.

The second major case involving the *Hicklin* test came in 1933 in *United States v. One Book Entitled Ulysses, 5 F.Supp. 182 (1933)*. The Court held James Joyce's *Ulysses* not obscene. The Court also rejected the *Hicklin* test and established a new test for determining obscenity.

It was held that the first inquiry was whether the material was written with "pornographic intent." If the author's intent was pornographic, then the book would be judged obscene. However, if there was no pornographic intent, courts could then look to the work's effect upon the average member of the community. The Court's opinion stated that obscenity decisions should be based upon the work in its entirety, not on the alleged obscene nature of isolated passages of the book.

Finally, it was established that if a work which was determined to contain pornographic intent tended to "stir the lustful thoughts," it would also be deemed obscene. The Second Circuit Court of Appeals affirmed the decision. Although the new test was limited to that circuit, it greatly reduced the impact of the *Hicklin* test and signaled a relaxation of the then existing obscenity standards.

However, some federal courts continued to abide by the *Hicklin* test as late as the 1950's. For example, in 1953, a Federal District Court in California applied the *Hicklin* test to two books by Henry *Miller*. Viewing only isolated passages of *Miller's Tropic of Cancer* and *Tropic of Capricorn*, the court held both books to be obscene. The decision was also affirmed by the Ninth Circuit Court of Appeals.

Although the *Hicklin* test was being eroded by federal courts in New York, it remained a powerful legal force in the state courts. In 1944 *Lady Chatterly's Lover* by D. H. Lawrence, was held obscene by a New York court in *People v. Dial Press, 182 Misc. 416*. Several years earlier, a Massachusetts bookseller was convicted for selling

copies of *An American Tragedy*, by Theodore Dreiser, in *Commonwealth v. Fried, 271 Mass. 318 (1930)*. Both state courts relied exclusively on the *Hicklin* test in making their determinations. State Courts continued to rely on the *Hicklin* test through the 1950's.

By the 1950's, obscenity law in the U.S. was by no means uniformity applied. A book that would be held obscene by a federal court in California might not be held obscene by a federal court in New York. Furthermore, most state courts would apply a more stringent standard than any of the federal courts. Whether a work was judged obscene often depended on where the suit was brought. By the 1950's, the definition of obscenity was long overdue for clarification by the United States Supreme Court.

The 1957 Supreme Court Obscenity Test

Roth V. United States, 354 U.S. 976 (1957)

Background

In addition to establishing a uniform test for obscenity, the Supreme Court was also compelled to determine the constitutional implications of permitting the censorship of obscene material. Specifically, the Supreme Court still had not determined whether obscene material was an exception to the First Amendment which prohibits Congress from passing any law abridging the freedom of speech or press.

Finally, in 1987, the Court sought both to define obscenity and to rule on its standing in regard to the First Amendment. The *Roth* test was a second test of obscenity after *Hicklin*, and was the predominant standard until 1973. During that period, obscenity tended to be defined and regulated by considerably relaxed standards.

Case Specifics

In this case, Samuel Roth was convicted for violating the Federal Obscenity Statute, 18 U.S.C. 1461. Roth was convicted because he sold books and magazines in New York City that authorities claimed were obscene. Another case heard along with Roth's was that of David Alberts, who conducted a mail-order business from Los Angeles. Alberts had been convicted for selling obscene material by a California State Court. Both Roth and Alberts claimed the materials they were selling were protected under the First Amendment.

The Supreme Court ruled obscene material was **not** protected by the First Amendment. Relying on the history of obscenity, Justice Brennan, writing for the majority, held that "the unconditional phrasing of the First Amendment was not intended to protect every utterance." According to the Court, the First Amendment was by no means absolute, and therefore obscenity was not to be within the area of constitutionally protected speech or press.

The Court hearing the *Roth* case, found that the purpose of the First Amendment would not be served by allowing constitutional protection to obscenity. Brennan noted that the protections afforded free speech and press were there to assure "unfettered interchange of ideas for the bringing about of political and social changes desired by the people." The Court found that obscene material possessed little, if any, social value, and that it was damaging to public morals. Quoting from an earlier case, *Chaplinsky v. New Hampshire, 315 U.S. 568, 1942*, the majority stated:

> "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene .... It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may he derived from them is clearly outweighed by the social interest in order and morality ... ."

Next, the Court examined the nature of obscenity and arrived at a definition. At the outset, the Court explicitly denounced and rejected the previous *Hicklin* test as "unconstitutionally restrictive of the freedoms of speech and press." Instead, the Court sought to formulate a less restrictive test which would be more likely to prevent constitutionally protected speech and press from being labeled obscene. This requirement for obscenity focused on several elements.

First, the Court noted differences between sex and obscenity. To be considered obscene, material must deal with sex, but must do so in a manner which appeals to the prurient interest. The term "prurient" meant "material having a tendency to excite lustful thoughts." The portrayal of sex, in and of itself, is insufficient cause to suppress material. The Court stated:

> "All ideas having even the slightest redeeming social importance – unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion – have the full protection of the guaranties, unless excludable because they encroach upon the limited

area of more important interests. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance."

Second, the test applies to the average person. The printed material must be capable of affecting somebody other than a particularly susceptible individual. It must be applicable to "normal" persons.

Third, the material must violate "contemporary community standards." Yet, it wasn't until 1964, in the *Jacobellus v. Ohio* case, that the meaning of "community" became clear. The term "community" was defined as national in scope. Accordingly, contemporary "community" standards, in effect meant, contemporary "national" standards.

Fourth, the material must be considered as a whole. It is not judged merely by an isolated excerpt. Concern must be with the dominant theme of the piece.

In conclusion, the Court trying the *Roth* case established a two-part test for obscenity. The first part asked:

"Whether the average person applying contemporary community standards, finds the dominant theme of the material, taken as a whole, appeals to the prurient interest."

The second part asked whether the material in question was "utterly without redeeming social importance." In other words, even if the alleged obscene material appealed to the prurient interest, it would not be obscene if it were shown to possess some redeeming social importance.

Applying this test, the Court affirmed the convictions of both Roth and Alberts for selling obscene material. The vote in *Roth* was 6-3, and in *Alberts*, 7-2.

The Harlan-Douglas-Black Dissents

Strong dissents in this case pointed out several problems with the *Roth* test. Justice John Harlan had three major difficulties with the majority's decision. First, Harlan believed the Court was not specific enough in what it meant by "redeeming social importance." Did the term include only political and social works, or entertainment and artistic works as well?

Second, Harlan criticized the Court's ambiguous use of the term "prurient interest." He believed that one person may interpret it only to encompass the slightest sexual desire, while another would interpret it only to encompass extreme perversion. Finally, Harlan did not believe it was the Supreme Court's job to regulate public morals; this job belonged to the states. He noted the dangers of establishing a degree of federal censorship and concluded that such decisions regarding censorship be left up to the states. (It should be noted that Harlan concurred in *Alberts*, where state statutes were the basis for conviction. He dissented in *Roth*, where federal statutes were applied.)

Justices William Douglas and Hugo Black dissented in both cases. They believed that obscene material was protected by the First Amendment. They relied on the absolutist phrasing of the Amendment to reach their decision. They objected to a test which punished thoughts provoked, rather than anti-social behavior. Also, they felt that a test which rested on what is offensive to the community's standards was too loose and allowed for community censorship that was unduly capricious. Therefore, both Douglas and Black found the federal obscenity statute under which *Roth* was convicted to be unconstitutional.

Douglas stated:

"The legality of a publication in this country should never be allowed to turn either on the purity of thought which it instills in the mind of the reader or on the degree to which it offends community conscience. By either test the rule of the censor is exalted and society's values in literary freedom are sacrificed."

Both Justices concluded that society's interest in unrestricted speech far outweighed the Court's interest in trying to regulate obscene material. They had "the same confidence in the ability of our people to reject noxious literature" as they had "in their capacity to sort out the true from the false in theology, economics, politics, or any other field."

Obscenity After the *Roth* Decision

By the mid 1960's it became clear that the *Roth* case had opened a Pandora's Box of problems for American obscenity law. The major problem still lay in the definition of obscenity. In cases involving obscenity, this problem often left the Justices divided and frequently the Court could not produce a majority.

During this decade, the Court not only modified the *Roth* test itself, but it also varied the way in which it was applied. For example, in some situations the Court chose not to apply the test at all. In others, application of the test was either limited or extended.

The obscenity standard set up by the Earl Warren Court was overturned on June 21, 1973, when Nixon appointees Lewis Powell, Harry

Blackmun, William Rehnquist, and Warren Burger were joined by Byron White to constitute a five-man majority in *Miller v. California.*

The Post-*Roth* Environment: 1957-1973

The 1960's and 1970's brought greater judicial activity in the law of obscenity. This period, immediately following *Roth* and eventually producing the *Miller* case, was noted for social experimentation and change. America at this time was called by many "the permissive society," where "anything goes" in art or literature.

This increased level of personal freedom of expression was viewed by conservatives as a license for excess, and earnest individuals moved to "clean up" bookstores, newsstands, and movies. If selling obscenity was becoming a more profitable business, opposing obscenity was more attractive to politicians and district attorneys.

This period produced many significant cases which repeatedly challenged legal precedent and authority.

Review of Litigation

The obscenity standard set forth in the 1957 *Roth* case and modified in subsequent actions, did not provide a precise test for determining obscenity. The test called for the application of extremely vague and subjective phrases. As a result, judges and juries were forced to ask themselves a number of difficult questions. For example, what is "patently offensive," what is "utterly without social redeeming value," and what was "prurient interest."

Weaknesses in the *Roth* decision were noticed at once. While Chief Justice Warren concurred, he was unhappy about the basis of the decision. Justice Harlan would have preferred to join the decision, but could not because of its implications. Justices Douglas and Black rejected it completely. Thus, while *Roth* did become a landmark decision, dissenting opinions weakened its value as a long-lasting precedent.

In spite of this confusion and uncertainty, the *Roth* test was used vigorously for the short-term resolution of many pending obscenity cases. The Supreme Court used it at least 19 times up to 1968, and it was invoked over 300 times in federal districts and state courts up to 1968. [See Shepard's *United States Citations: Case Editions, Supplements*, 1943-1964 and 1964-1968, (Shepard's Citations, Inc., Colorado Springs)]

In some instances, *Roth* was invoked to sustain a conviction. Nevertheless, most of the citations of *Roth* in subsequent Supreme Court decisions are used to reverse lower-court convictions for distribution of obscene literature. Thus, for many advocates of free speech and a free press, the *Roth* decision provided the basis for defense of their position.

Manual Enterprises v. Day, 370 U.S. 478 (1962)

In this case, the Postmaster General had prohibited Manual Enterprises from using the mails to transport magazines which he judged to be obscene. He based his opinion on the fact that the magazines contained pictures of nude male models. A District Court agreed with the Postmaster General and found that the materials violated federal obscenity law.

On appeal, the Supreme Court reversed. Justice Harlan, joined by Justice Stewart announced the decision of the Court. In finding the magazines not to be obscene, Harlan held that the "prurient interest" test in *Roth* was not enough to establish obscenity. Instead, he stated that if material is to be obscene it must also be "patently offensive." In fact, Harlan claimed, material must be deemed "patently offensive" before it may be subject to the "prurient interest" test. As applied to the facts of this case, Justice Harlan did not find the pictures of nude male models "patently offensive." Therefore the *Roth* test was inapplicable and the pictures could not be held obscene.

Another significant aspect of this case was Justice Harlan's treatment of the "redeeming social importance" requirement of the *Roth* test. Harlan noted that the magazines in question possessed no scientific, literary, or artistic value. Yet the material was not held obscene. Consequently it was established that material need not possess some "socially redeeming importance' in order to escape being labeled obscene.

As the first major modification of the *Roth* standard, this case is important for two reasons. First, it limited the scope of the *Roth* test by requiring that material first be shown as "patently offensive." Second, it also limited the scope of *Roth* by establishing that material lacking any "redeeming social importance" may not be obscene. Thus, the Court moved closer to a definition of obscenity which only encompassed "hard core" pornography.

Jacobellus v. Ohio, 378 U.S. 184 (1964)

In this case, Nico Jacobellus, manager of a

Cleveland movie theatre, had been convicted under Ohio law on two counts of possessing and exhibiting an obscene film. A French film, *Les Amants* (*The Lovers*) was the focus of this controversy. One scene in particular showed a man kissing a woman on the lips and as he gradually moved down towards her waist he moved out of frame and off camera. This film was challenged **not** for what it depicted but rather for what it suggested. Jacobellus had been fined $2,500 and his conviction was upheld by the Ohio Supreme Court. Again, the issue on appeal to the Supreme Court was whether the material was obscene. Again, a divided court said it was not.

Writing for the Court in this decision, Justice Brennan conceded that while the *Roth* test was by no means perfect, it was the best test the Court could formulate. He stated "we think any substitute (test) would raise equally difficult problems, and we therefore adhere to that standard." Brennan paid special attention to the "redeeming social importance" criteria:

> "We would reiterate, however, our recognition in *Roth* that obscenity is excluded from the constitutional protection only because it is "utterly without redeeming social importance," and that "the portrayal of sex, e.g., in art, literature, and scientific works, is not itself sufficient reason to deny material the constitutional protection of freedom of speech and press." Nor may the constitutional status of the material be made to turn on a "weighing" of its social importance against its prurient appeal, for a work cannot be proscribed unless it is "utterly" without social importance."

The Brennan decision also adopted the "patently offensive" requirement set up in the *Manual Enterprises* case. Applying this criteria, he found the film shown by Jacobellus was not obscene. Justices White, Black, and Douglas concurred on grounds similar to those discussed previously in the Douglas-Black dissent in the *Roth* case. Chief Justice Warren, Justices Clark and Harlan dissented. All three felt the states should be given more leeway in making obscenity judgements.

The problem of defining "contemporary community standards" is the most significant aspect of this case. Justice Brennan's decision in *Jacobellus* made one very substantial change in the *Roth* standard. The "prurient interest" test in *Roth* was originally to be based on community standards. Brennan, in *Jacobellus*, asserted that the community standards test referred to a national standard. By adopting a national standard, he hoped to establish a uniform definition of obscenity, rather than let each community decide for itself. Brennan held that no "local" definition of the "community" could properly be employed in delineating the area of expression that is protected by the Federal Constitution:

> "The Court has explicitly refused to tolerate a result whereby "the constitutional limits of free expression in the Nation would vary with state lines ... we see even less justification for allowing such limits to vary with town or county lines. We thus reaffirm the position taken in *Roth* to the effect that the constitutional status of an allegedly obscene work must be determined on the basis of a national standard. It is, after all, a national Constitution we are expounding."

The *Jacobellus* decision did not make the definition of obscenity any clearer. While the majority did vote to reverse the conviction of Jacobellus, there was disagreement on the proper role or status of local and national standards. Justice Potter Stewart seemed to typify the Court's frustration with obscenity when he stated in his *Jacobellus* dissent:

> "I shall not today attempt to define the kinds of material I understand to be embraced within that short-hand definition; and perhaps I could never succeed in intelligibly doing so. But **I know it when I see it** and the motion picture involved in this case is not that."

From 1966 into 1968, the Supreme Court shifted its emphasis from attempting to judge the content of a publication to trying to gauge the character of a bookseller's or distributor's actions or conduct.

Memoirs v. Massachusetts, 383 U.S. 413 (1966)

There is an unusual amount of history involved in this case, as the book in question was originally published in 1749. The question before the Court was whether John Cleland's book entitled *Memoirs of a Woman of Pleasure* was obscene as found by a Massachusetts State Court. This book is also known as *Fanny Hill.*

It should be noted that *Fanny Hill* was the first book to be the subject of an obscenity trial, in Massachusetts in 1821.

Now, more than 140 years later, *Fanny Hill* was back in the courts of Massachusetts, as well as in New York, New Jersey and Illinois. In his state-

ment about this case, Justice Douglas pointed out that these prosecutions seemed highly ironic in view of the fact that the Library of Congress had asked permission to translate the book into Braille.

Fanny Hill is unusual among books which are involved in obscenity cases. There is not one of the "four letter words" which have frequently put modern writing in the courts. Although Cleland's language was "clean," if you will, his descriptions of bedroom activities were highly explicit and sexual adventures occurred frequently throughout the text.

One of the prosecuting attorneys pointed out that the book contained "over 20 acts of sexual intercourse, four of them in the presence of others: four acts of lesbianism, two acts of male homosexuality, two acts of flagellation and one of female masturbation." By a 4-3 vote, the Massachusetts Supreme Judicial Court upheld a lower court ruling that *Fanny Hill* was obscene.

The Supreme Court of the United States, however, held that the Massachusetts court had erred in finding that a book didn't have to be "unqualifiedly worthless" before it could be deemed obscene. The Court applied the *Roth* test, noting that three elements must be present: the dominant theme taken as a whole must appeal to the prurient interest, the material must be patently offensive in light of contemporary community standards, and the material must be utterly without redeeming social value.

The Court stated each of the three criteria must be applied independently; the social value of the book can neither be weighed against nor canceled by its prurient appeal or patent offensiveness. Thus, even though the book possesses minor social value, it cannot be judged as obscene.

The Court judged *Fanny Hill* to be a novel with literary merit. Expert testimony from writers and critics had shown the Court that the book displayed skill in characterization and comedy. The work was shown to play a role in the history of the English novel. Finally, the Court noted that the book contained a moral – namely that sex with love is superior to sex in a brothel.

After this case, the *Roth* standard had officially been transformed into the already-described three-part test. As evidenced by this case, the most difficult part of the new test to satisfy was that the material be "utterly without social redeeming value." After all, almost anything can be shown to possess some social value. In a sense, after *Fanny Hill*, the court had narrowed the constitutional definition of obscenity to include only hard-core pornography. Following this case, it was very difficult for anything to be held obscene.

From 1967 until 1973, many convictions were reversed by the Supreme Court because a majority could not agree upon a definition of obscenity. In 1973, the obscenity standard set up by the Earl Warren Court was overturned by the *Miller* decision.

Miller v. California, 413 U.S. 15 (1973)

By the early 1970's it was clear that the obscenity standard would have to be changed, or at least more clearly defined. By 1973, a number of new Justices had been added to the Supreme Court by President Nixon. A new Chief Justice, Warren Burger, was appointed.

For the first time since the *Roth* decision, the Supreme Court was able to put together a solid majority to deal with the obscenity issue. The Burger Court made a substantial effort to further define obscenity. The new definition was formulated and applied in a series of decisions handed down in 1973.

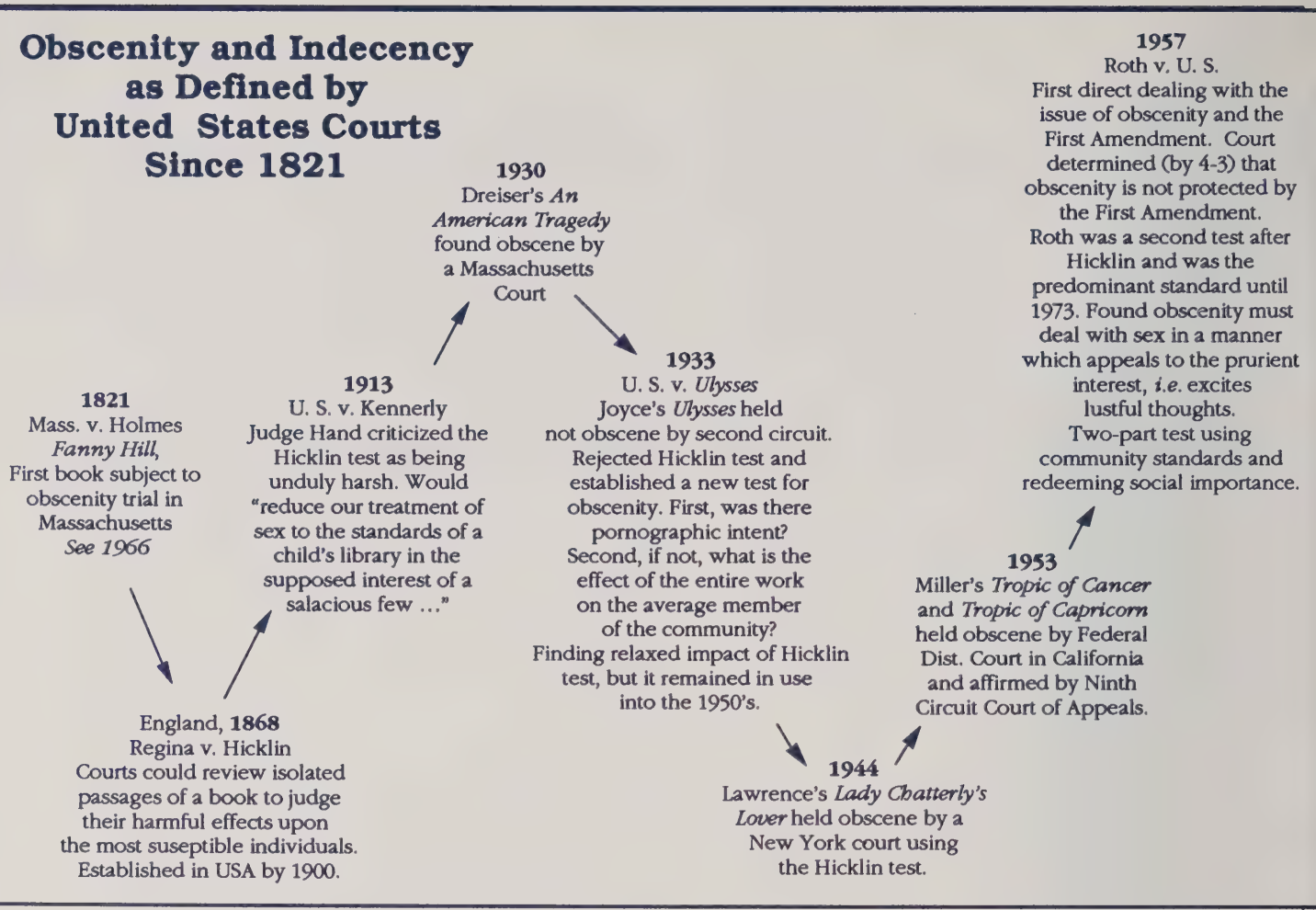
Marvin Miller distributed unsolicited, sexually-explicit advertising brochures to unwilling recipients. The brochures promoted four books and a film, and contained pictures which depicted men and women engaging in a variety of sexual activities. One of these brochures arrived through the mail to a restaurant in California. The manager opened Miller's advertising, and complained to the police. Miller was eventually convicted. His appeal finally reached the Supreme Court.

Case Specifics

The newly formed Burger majority voted five to four to uphold Miller's conviction for mailing obscene material.

Writing for the majority, Chief Justice Burger established a new test for obscenity. He wrote:

> "We now confine the permissible scope of such regulation (of obscene materials) to works which depict or describe sexual conduct. That conduct must be specifically defined by the applicable state law, as written or authoritatively construed. A state offense must also be limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.



> "The basic guidelines for the trier of fact must be: (a) whether the "average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest ... (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value. We do not adopt as a constitutional standard the "utterly without redeeming social value" test of *Memoirs v. Massachusetts* ... ; that concept has never commanded the adherence of more than three Justices at one time."

Although the new test may seem similar to the old one, it incorporated some substantial changes. First, and most importantly, the *Miller* test did not require that a work be "utterly without redeeming social value" to be obscene. Instead, this test only required that material not have "serious value." In making this change, the *Miller* test made it easier to establish a finding of obscenity. Under the *Roth* test, material could not be held obscene as long as some showing could be made that it possessed some minor degree of redeeming social value. Clearly, the *Roth* test had been tightened.

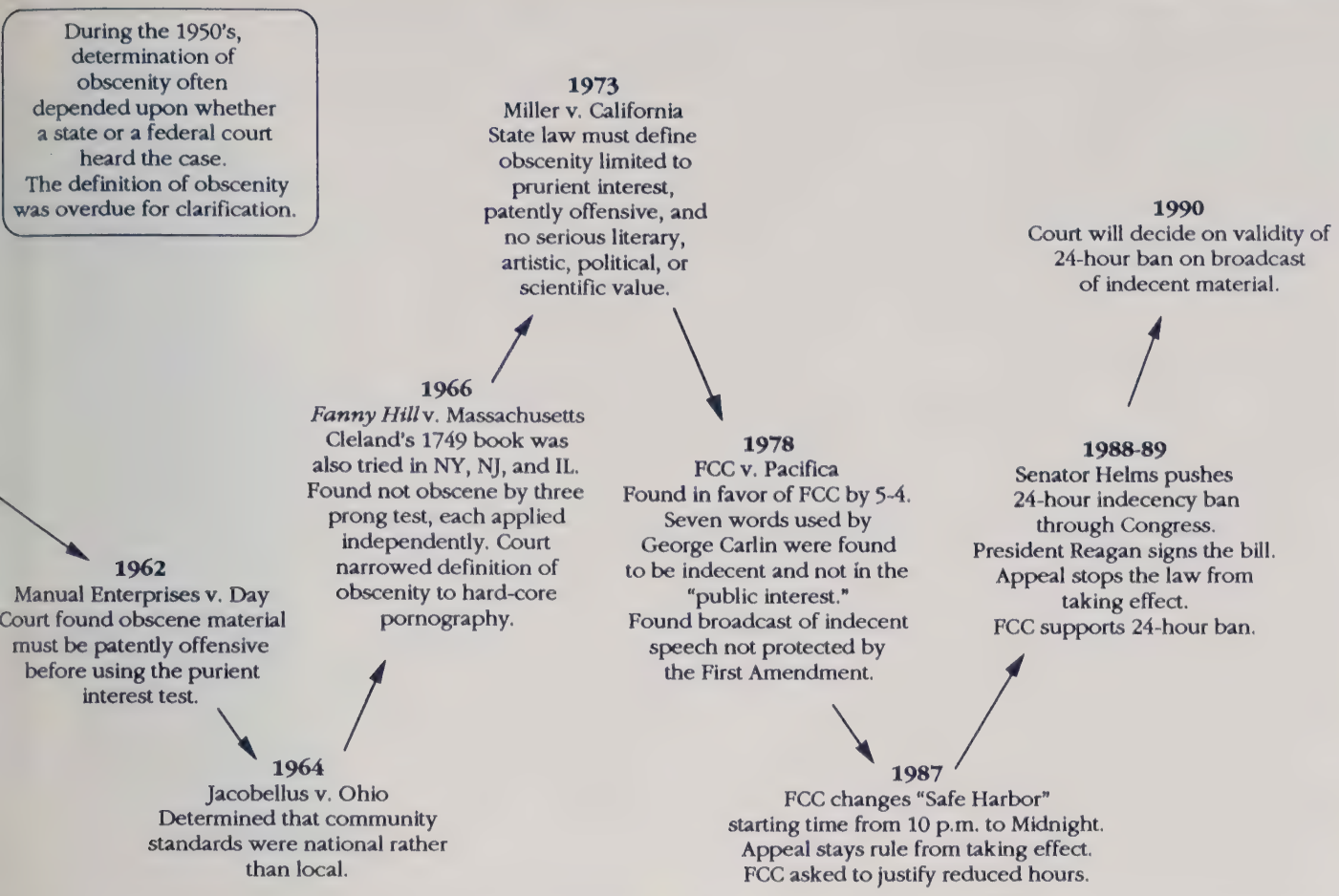
Second, the *Miller* majority decision gave examples of what it believed would constitute the term "patently offensive." The opinion stated:

> "(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated. (b) Patently offensive representation or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals."

In further defining the term "patently offensive," the Court made clear to the states exactly what sexual acts were to be deemed obscene, and thus prohibited.

Although this decision did not specifically address the term "prurient interest," it did refer to the types of material which may be prohibited. The opinion stated:

> "Under the holdings announced today, no one will be subject to prosecution for the sale or exposure of obscene materials unless these materials depict or describe patently offensive "hard-core" sexual conduct specifically defined by the regulating state law, as written or construed."



Therefore, the Court trying the *Miller* case was only willing to prohibit "hard-core" pornography. If the prurient interest of someone were aroused by material which was not "hard-core," the material could not be labeled obscene.

Finally, the *Miller* opinion made it clear that obscenity was not to be judged on a national standard. The Chief Justice found that only on a community-by-community standard could the obscenity tests be effectively applied. Burger believed it would be impossible to set uniform national standards describing precisely what appeals to the "prurient interest" or is "patently offensive." He stated:

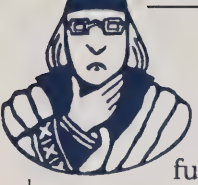
> "It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas or New York City. ... People in different States vary in their tastes and attitudes, and this diversity is not to be strangled by the absolutism of imposed uniformity. ... We hold the requirement that the jury evaluate the materials with reference to "contemporary standards of the State of California" serves this protective purpose and is constitutionally adequate."

By requiring obscenity to be judged according to the prevailing standard of the community in which the trial takes place, material could be found obscene in one area of the country and not in another.

Dissent by Justice Douglas

In dissent, Justice Douglas insisted the new test was unconstitutionally vague. He believed that the *Miller* test, like the *Roth* test before it, did not give the public fair warning as to what material could not be published: "To send men to jail for violating standards they cannot understand, construe, and apply is a monstrous thing to do in a nation dedicated to fair trials and due process."

In addition, Douglas believed that without a national standard for obscenity, the application of obscenity tests would vary from community to community. This would inevitably lead to a lack of uniformity in the law which the First Amendment does not tolerate. Also, there was no concrete evidence that obscene material affected antisocial behavior. The fact that a bare majority of the Court felt that it might do so was not enough to prohibit its viewing by consenting adults.



Justice Douglas also continued to address his fundamental disagreement with the Court's position on obscenity; that it is not outside the protection of the First Amendment. "The idea that the First Amendment permits Government to ban publications that are 'offensive' to some people puts an ominous gloss on freedom of the press." If Douglas had his way, no material, no matter how obscene, could he banned.

Miller Decision Summary

Although the *Miller* Court reaffirmed the *Roth* holding that obscene materials were not protected by the First Amendment, the Court substantially modified the standard for determining what constitutes obscenity.

First, only "hard-core" pornography could be prohibited. Second, the material must not possess any "serious value." Third, the material was to be judged on a community-by-community basis. Finally, specific guidelines were drawn to describe what material could be deemed "patently offensive."

In this decision, and in its other 1973 decisions, the Court made it easier for states to define obscenity. As long as a jury could find that the alleged obscene material was "patently offensive," appealing to the "prurient interest," and without "serious value," it could be held obscene. The *Miller* standard remains as the foundation of all decisions regarding obscenity and pornography.

II. Broadcast Regulation and Censorship

In order to understand why the communications industry is regulated, one must briefly look to its history. Before 1927, the allocation of broadcast frequencies was left entirely to the private sector. Since there were a finite number of frequencies for a virtually unlimited number of broadcasters or potential broadcasters, the result was mass confusion. There were simply too many voices competing to be heard and not enough spectrum space to accommodate them.

Congress thus enacted the Radio Act of 1927, which established the Federal Radio Commission (FRC) to allocate frequencies. The Radio Act later gave birth to the more comprehensive Communications Act of 1934 which still governs U.S. telecommunications today.

The administrative body created by Congress to enforce the Act is the Federal Communications Commission (FCC). The FCC is composed of 5 people appointed by the President for terms of varying lengths. Under the provisions of the Act, the FCC is granted power to supervise rates and services and to regulate broadcast licenses.

Although Congress, by necessity, is permitted to regulate broadcasters, this power may not infringe upon First Amendment rights. The Supreme Court pointed out in *Red Lion Broadcasting Co. v. FCC, 395 U.S. 376 (1968)* that: "the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment." The battle to keep "pornography" off the airwaves pits the First Amendment against the power of Congress to regulate under the Act.

The federal power to regulate the program content of radio and television resides in three conflicting statutes. First, the Communications Act empowers the FCC to regulate broadcasters in the public interest. Section 303 of the Act empowers the FCC to regulate the communications industry to serve the public convenience, interest, and necessity. Those broadcasters who do not serve the "public interest" may have their licenses to operate suspended or revoked by the FCC, but this has rarely happened.

The second is a criminal statute which prohibits the broadcast of indecent or obscene language. Section 1464 of the U.S. Criminal Code reads:

> "Whoever utters any obscene, indecent or profane language by means of radio communications shall be fined not more than $10,000 or imprisoned for not more than two years or both."

Finally, the FCC is prohibited by the Communications Act from ever exercising censorship over broadcasters. Section 326 of the Act reads:

> "Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."

The above three statutes certainly conflict with one another. On the one hand, material which does not serve the public interest may not be

broadcast. On the other hand, this would appear to constitute censorship that would violate freedom of speech. Furthermore, Section 1464 prohibits the broadcast of indecent and obscene speech. This provision would also seem to constitute censorship, violating a broadcaster's freedom of speech.

It would also appear that Section 1464 is in conflict with the *Miller* decision (1973) which requires that only material which is judged obscene may be prohibited. Those who want to keep "pornography" off the airwaves claim that it is both indecent and not in the public interest. Those who want to permit the broadcast of such adult-oriented material claim that to do otherwise would amount to censorship in violation of the First Amendment.

WDKD, Palmetto Broadcasting Company

(1962)

Background

This is one of the first cases involving the competing claims of free speech and control of obscenity. Though the Commission recognized the grave constitutional question involved in prior restraints on communication, this case was used to acknowledge its responsibility for guaranteeing that the license be granted in the public, not private interest.

Radio station WDKD devoted up to 25% of its programming to off-color jokes and other statements that the FCC examiner concluded were "coarse, vulgar, suggestive, and susceptible of indecent, double meaning." The record indicated that a significant number of listeners in the WDKD coverage area were especially offended by the Charlie Walker Show. The examiner denied renewal of the station license.

Results

On appeal, the full Commission affirmed the original decision and noted that although censorship was not permissible, the station's license renewal could be denied if based on grounds of public interest. In this action, the Commission referred to its programming statement, issued July 29, 1960, which forbade censorship on the basis of personal opinion and taste:

> "But this does not mean that the Commission has no authority to act under the public-interest standard. Rather, it means that the Commission cannot substitute its taste for that of the broadcaster or his public – that it cannot set itself up as a national arbiter of taste ... . It follows that in dealing with the

issue before us, we cannot act to deny renewal where the matter is a close one, susceptible to reasonable interpretation either way. We can only act where the record evidence establishes a patently offensive course of broadcasting."

The FCC denied renewal of WDKD's license on the basis that such a large portion of broadcast time devoted to such questionable material represented "an intolerable waste of the only operating facilities in the community ... ."

Pacifica Foundation I (1964)

Background:

In this case, the Commission significantly modified the stance taken in *Palmetto*. The Pacifica Foundation had applied for a new license for Los Angeles station KPFK, and for renewals of licenses for WBAI (New York, NY) and KPFB and KPFA-FM (Berkeley, CA).

In deciding whether to grant the requests, the Commission considered certain programming complaints as well as the question of possible Communist Party affiliation of Pacifica members. Five programs broadcast over a four-year period were considered offensive or "filthy" by a group of listeners.

Unlike the *Palmetto* case, the licensees did not devote a substantial part of the broadcast day to such programs. Pacifica argued that the programs served the needs and interests of the listening public.

Results

The FCC ruled in favor of Pacifica, stating that the programming decisions in question were within the range of licensee discretion. In voiding the complaints, the Commission argued:

> "We recognize that as shown by the complaints here, such provocative programing as here involved may offend some listeners. But this does not mean that those offended have the right, through the Commission's licensing power, to rule such programming off the airwaves. Were this the case, only the wholly inoffensive, the bland, could gain access to the radio microphone or TV camera."

In fact, the complaints filed by listeners did not "pose a close question in the case: Pacifica judgements as the above programs clearly fall within the very great discretion which the Communications Act of 1934 wisely grants to the licensee." The FCC gave Pacifica, the licensee, the benefit of the doubt.

The standard of public interest is not so rigid that an honest mistake or error on the part of the licensee results in drastic action against him when his overall record demonstrates a reasonable effort to serve the needs and interests of the community.

As for the Communist affiliation issue, the Commission argued that the relevant question was not whether the principals of the applicants were communists but whether the applicants themselves were. Since there was no evidence of such affiliation, the Commission disregarded the issue.

The 1964 *Pacifica* decision signaled a philosophical shift by the FCC. License holders would have wide discretion in programming considerations. In effect, the Commission set itself up not as an arbiter of programming standards but as a public tribunal of sorts in which matters of public interest could be weighed.

Six years later, the FCC expressed reservations about its decision in *Pacifica*. In a case involving WUHY-FM, the Commission, though reluctant to shape individual programming decisions of its licensees, was not willing to condone the broadcasting of obscenity.

WUHY-FM, Eastern Educational Radio (1970)

Background

WUHY-FM, a Philadelphia market, noncommercial educational radio station, broadcast the program *Cycle II* weekly between 10:00 and 11:00 p.m. On January 4, 1970, Jerry Garcia of The Grateful Dead was inteviewed on the air. In the interview, Garcia frequently used words alleged to be "offensive." The FCC subsequently investigated the station.

In a notice of liability, the Commission fined WUHY $100 because of its broadcast of indecent programming. The notice indicated that during the interview, about 50 minutes in length, Garcia expressed his views on ecology, music and interpersonal relations. His comments were frequently interspersed with the words "fuck" and "shit."

In a letter of response, the licensee indicated that "internal procedures to insure against a similar incident are being strengthened" and that the program in question, *Cycle II*, had been suspended, pending review.

Results

Ruling against the station, the FCC declared that the material was obscene; that the language had "no redeeming social value" and was "patently offensive by contemporary community standards." In addition, the FCC concluded that the material was presented willfully. Even though the program

was presented without obtaining the station manager's approval – contrary to station policy – the licensee was not absolved of responsibility.

The Commission also noted the inherent distinction between radio and other non-electronic communication media.

> "Unlike a book which requires the deliberate act of purchasing and reading or a motion picture where admission to public exhibition must be actively sought, broadcasting is disseminated generally to the public under circumstances where reception requires no activity of this nature. **Thus, it comes directly into the home and frequently without any advance warning of its content.**"

The "intrusive" nature of broadcasting is an important concept that was used by the FCC in later cases, especially in *WGLD-FM (1973), WXPN (1975)* and *Pacifica Foundation II (1978).*

WUHY-FM chose to pay its fine. Therefore, there was no opportunity for judicial support or clarification of the obscenity standard set up by the FCC. This caused further confusion, because the FCC's definition differed significantly from either the Supreme Court's *Roth* or *Miller* tests. The FCC banned specific words instead of judging the expression in its totality and determining whether it possessed intrinsic value as judged by contemporary community standards. The broadcasting of obscene material was subject to a completely different standard than obscenity that was merely communicated by non-broadcast means.

WGLD-FM, Sonderling Broadcasting Corp.

(1973)

Background

In 1973, the FCC clarified its approach in an attempt to conform more closely with judicial doctrine regarding obscenity. WGLD-FM, in a Chicago suburb, was one of a number of stations that used a format sometimes called "topless radio," in which an announcer took calls from the audience and primarily discussed sexual topics. Perhaps 200 stations throughout America featured these programs that were available from syndication sources or produced locally.

From 10 a.m. to 3 p.m., 5 days a week, WGLD-FM broadcast a popular call-in show, *Femme Forum*, on which a number of topics related to women's interests, including various aspects of sex, were discussed. On February 23, 1973, the topic was "oral sex." The program consisted of very explicit exchanges in which female callers spoke of their oral-sexual experiences. The following exchange is included in the transcript of the FCC case *41 FCC 2d 919 (1973)*:

> "*Female Listener* ... of course I had a few hangups at first about ... in regard to this, but you know what we did ... I have a craving for peanut butter ... so I used to spread this on my husband's privates and after a while, I mean, I didn't even need the peanut butter any more.
>
> *Announcer*: (Laughs) Peanut butter, huh?
>
> *Listener*: Right. Oh, we can try anything ... you know ... any of these women that have called and they have, you know, hangups about this, I mean they should try their favorite ... you know like ... uh ...
>
> *Announcer*: whipped cream, marshmallow...

Such programming was either softened or pulled off the air following the FCC's subsequent announcement of the institution of a "non-public" inquiry to find out whether and to what extent Section 1464 was being violated.

The simultaneous passage of a resolution by the National Association of Broadcasters (NAB) deploring the airing of such content, and a speech to the NAB by then FCC Chairman Dean Burch who urged broadcasters to show restraint and good taste in programming lest the government be forced to take action, provided additional pressure to drop "topless radio."

It is interesting to note that explicit discussions of sexual attitudes and behavior have since been regularly presented by Dr. Ruth Westheimer on national radio and cable television. "Sexually Speaking" began as a radio talk show on Sunday nights on WYNY-FM, in New York City in the late 1970's. The program enjoyed great success and was then made available to national radio audiences. She also produced "Good Sex" for the Lifetime Cable TV Network. Since Dr. Ruth is a recognized "expert" on psychological and sexual matters, her discussions with listeners, however intimate or explicit they may be, are generally viewed as being more "legitimate" than those produced at WGLD-FM in 1973.

Results

The FCC found WGLD-FM guilty of willful violations and fined Sonderling Broadcasting Corporation $2,000. The FCC emphasized that sex *per se* was not a forbidden subject on the broadcast medium. In distinguishing this case from the 1964 *Pacifica* case, the FCC noted that "we are not dealing with works of dramatic or literary art as

we were in *Pacifica*." WGLD-FM did not contest the ruling, and paid the fine.

Two tests were applied in this case. First, the FCC applied arguments developed in the Supreme Court's *Roth* case. In making some attempt to apply this 1957 test of obscenity, the FCC claimed that the *Femme Forum* program contained explicit material that was "patently offensive to contemporary standards for broadcast matter." Special emphasis was placed on the fact that minors compose a significant segment of its radio audience:

> "Our conclusions here are based on the pervasive and intrusive nature of broadcast radio, even if children were left completely out of the picture. However, the presence of children in the broadcast audience makes this an *a fortiori* matter. There are significant numbers of children in the audience during these afternoon hours – and not all of a preschool age. Thus, there is always a significant percentage of school age children out of school on any given day. Many listen to radio; indeed it is almost the constant companion of the teenager."

Second, the Commission considered the *WUHY* case. In this decision, the FCC set forth its construction of the term "indecent" as defined in *18 U.S.C. 1464*, which provided a different standard than "obscene."

> "It is sufficient to note that to contravene the standard proscribing broadcast of indecent material, it must be shown that the matter broadcast is: (a) patently offensive by contemporary community standards and (b) utterly without redeeming social value."

The *Sonderling* decision granted the FCC the authority to ban not only obscene speech as defined in the Supreme Court *Roth* case, but also indecent speech as defined in the *WUHY* case.

Yale Broadcasting Company (1973)

Background

In 1973, the courts established the license holder's responsibility for knowledge, evaluation, and control of programming consistent with the public interest. The controversy involved a *Notice* issued by the Commission regarding "drug oriented music" allegedly played on some stations.

The FCC required licensees to have knowledge of the content of their programming, and on the basis of this knowledge, to evaluate the desirability of broadcasting music dealing with drug use. The FCC established guidelines. A licensee could fulfill its obligation by:

1. Pre-screening by a "responsible" station employee.
2. Monitoring program selections as they are broadcast.
3. Considering and responding to complaints made by the public.

The FCC *Order* made it clear that these procedures were suggestions, and were not to be regarded as either absolute requirements or the exclusive means of fulfilling public interest obligations. The FCC did not mandate any particular form of screening that was required but merely offered suggestions as to how the licensee might meet its obligation.

The Yale Case Specifics

On the grounds that the licensee failed to meet its responsibility, the FCC denied renewal to the Yale Broadcasting Company. Yale argued that the FCC *Notice* and the *Order* constituted an unconstitutional infringement on the right of free expression. In addition, Yale claimed the FCC statements were impermissibly vague and that the FCC abused its discretion in refusing to clarify them.

The District of Columbia Appeals Court found none of these arguments to be valid, and affirmed the action of the Commission. The Yale case is a demonstration of the concern the courts have in guaranteeing programming that is conscientiously chosen, aired, and evaluated. The court also implied that the presumption of sufficient performance by incumbent licensees no longer holds. All applicants have a positive responsibility to control and evaluate their programs in "the public interest, convenience, and necessity."

The WBAI Pacifica Case

FCC v. Pacifica Foundation 438 U.S. 776

(1978)

Background

While the *Sonderling* decision of 1973 placed considerable limitations on the broadcasting of indecent material, the courts had not dealt definitively with the issue. In the *Pacifica* case of 1978, the FCC fashioned its own definition of "indecency" and applied it to a program broadcast over WBAI in New York City on October 30, 1973.

At 12 Noon, WBAI presented a public affairs program featuring a discussion of society's attitude toward language. A segment of the album *George Carlin, Occupation: Foole* was played. Listeners were warned in advance that some of the

language might be regarded as offensive. The album devotes considerable time, about 12 minutes, to Carlin's discussion of the use of seven "dirty" words: "shit, piss, fuck, cunt, cocksucker, motherfucker and tits." A complaint was received by the FCC, from a father claiming that his young son had heard the broadcast while they were driving in a car. It should be noted that this was the only complaint received by the Commission concerning WBAI's broadcast of the George Carlin monologue.

The FCC Response and Order

Although the FCC found the monologue "patently offensive", it did not find it obscene. Nevertheless, the FCC issued a declaratory order ruling that such language could be banned from the airwaves. The Commission defined as indecent any language that described in terms patently offensive as measured by contemporary community standards for the broadcasting medium, sexual or excretory activities and organs, at times of the day when there was a reasonable risk that children may be present. The seven words Carlin used were found to be indecent and were prohibited.

The FCC advanced two reasons for its decision. First, Section 1464 of the U.S. Criminal Code required the Commission to prohibit the broadcast of indecent language. Second, such language was not in the "public interest" and could therefore be prohibited. The FCC also set forth several other policy reasons for its determination:

1. Children have access to radios and in many cases are unsupervised by parents;
2. Radio receivers are in the home, a place where people's privacy interest is entitled to extra deference;
3. Unconsenting adults may tune in a station without any warning that offensive language is being or will be broadcast; and
4. There is a scarcity of spectrum space, the use of which the government must therefore license in the public interest.

The Commission wanted to "channel" the broadcast to another time of day when it would be less likely that children would be present.

The *Pacifica* Appeal

WBAI's licensee, The Pacifica Foundation, appealed the Commission's decision to the United States Court of Appeals for the District of Columbia. Pacifica argued that the FCC had overstepped its power, and that its ruling amounted to censorship and violated the station's freedom of speech. The Carlin recording did not appeal to any prurient interest, had literary and political value, and was therefore not obscene. Pacifica argued that the FCC ruling would severely jeopardize the airing of certain programs of serious literary, artistic, political, or scientific value. The FCC, in response, argued that its ruling was constitutional and sufficiently precise. The Commission sought not to absolutely prohibit indecent broadcasts but merely to channel them to another time of day.

The Court of Appeals, in 1977, overruled the Commission's decision. It argued that despite professed intentions, the direct effect of the FCC order was to "inhibit the free and robust exchange of ideas on a wide range of issues and subjects by means of radio and television communications." According to the Court:

> "The Commission's claims that its Order does not censor indecent language but rather channels it to certain times of the day. In fact the Order is censorship regardless of what the Commission chooses to call it. ... The Commission expressly states that this language has "no place on radio," and that when children are in the audience, a claim that it has literary, artistic, political, or scientific value will not redeem it."

The Court of Appeals criticized the FCC for not allowing licensees to set their own programming standards.

FCC Appeal to Supreme Court

On appeal, the United States Supreme Court, in a narrow 5-4 decision, reversed the previous action of the Court of Appeals. Justice Stevens, writing for the majority, gave two major reasons why the decision of the FCC was proper. First, he found that broadcasting has a pervasive presence in American society and therefore required more stringent regulation than printed works. Second, the broadcast media has a unique accessibility to children. For these reasons, the Court found justification for permitting a different level of First Amendment protection for broadcasters, as opposed to printers.

The *Pacifica* case court majority found the broadcast of "indecent" speech to be unprotected by the First Amendment because of the large audience reached. Unlike a book or magazine, which must be deliberately purchased, the Court pointed out that broadcasting comes directly into the home with or without invitation:

> "Patently offensive, indecent material presented over the airwaves confronts the

citizen not only in public but in the privacy of the home, where the individual's right to be let alone plainly outweighs the First Amendment rights of an intruder."

Pacifica argued that if a listener found a program indecent or offensive he could simply turn elsewhere or turn the radio off.

In response to this argument, the Court replied with the following chestnut:

"To say that one may avoid further offense by turning off the radio when he hears indecent language is like saying that the remedy for an assault is to run away after the first blow."

The Court also noted that a prior warning (disclaimer) given by the broadcaster notifying listeners that some material might be offensive would not necessarily prevent the listener from hearing such a program.

The decision also stated that the broadcast of "indecent" speech is unprotected by the First Amendment because of its unique accessibility to children. The Court reasserted the government's interest in safeguarding the well-being of young persons. The opinion made it clear that even a child too young to read would have had access to the broadcast of the George Carlin monologue.

Finally, the Court took note of the authority of parents in their homes to bring children up the way they deemed proper. In this respect, it was found that "indecent" broadcasting interfered with that parental right.

Having held indecent speech outside the protection of the First Amendment when it is publicly broadcast, the Court went on to define what is meant by the term "indecent." The *Pacifica* decision defined "indecent"' as something that does not conform to "accepted standards of morality." The Court determined that "prurient appeal" which is an element of obscenity, is not an element of indecency. In other words, indecent speech need not arouse sexual thoughts. Instead, the *Pacifica* case court majority referred to Carlin's monologue as "patently offensive, vulgar, offensive, and shocking."

If part of a radio or television program is found to be patently offensive, vulgar, or shocking, it might be labeled indecent and banned.

Two significant sections of the Supreme Court ruling on the 1978 *Pacifica* case illustrate clearly the major concerns of both "sides" of this debate. The first quote is from the majority statement by Justice Stevens in the *Pacifica* case, and pertains to the intrusive nature of the electronic media.

"Patently offensive, indecent material presented over the airwaves confronts the citizen not only in public but in the privacy of the home, where the individual's "right" to be let alone plainly outweighs the First Amendment rights of an intruder."

In dissent, Justice Brennan expressed concern for the First Amendment rights of both the broadcast media and the people who want to hear such programs. He pointed out that the listeners themselves decide whether or not to invite the broadcast into their homes. Brennan stated:

"Whatever the minimal discomfort suffered by a listener who inadvertently tunes into a program he finds offensive during the brief interval before he can simply extend his arm and switch stations or click the "off" button, it is surely worth the candle to preserve the broadcaster's right to send, and the right of those interested to receive, a message entitled to full First Amendment protection."

According to Brennan, the majority holding could lead to unlimited censorship of protected speech. This included political and artistic works. He asserted that the Court's decision could:

" ... justify the banning from radio of a myriad of literary works, novels, poems, and plays by the likes of Shakespeare, Joyce, Hemingway, Ben Johnson, Henry Fielding, Robert Burns, and Chaucer; they could support the suppression of a good deal of political speech, such as the Nixon tapes; and they could even provide the basis for imposing sanctions for the broadcast of certain portions of the Bible."

Brennan, along with the other three dissenters, made it clear that the majority decision could give the FCC an unwarranted degree of censorship over broadcasters.

Implications of the *Pacifica* Appeal Decision

The *Pacifica* appeal decision upholds the FCC's authority to prohibit the broadcast of indecent speech under Section 1464. However, unlike obscenity, indecent speech in non-broadcast media is still afforded some constitutional protection. Indecent speech printed in a book, for example, would still be protected.

Quoting from another case, the *Pacifica* court used the following example:

" ... while a nudist magazine may be within the protection of the First Amendment ... the televising of nudes might well raise a serious question of programming contrary to *18 U.S.C. Section 1464.*"

The Court's reasons for this distinction is the large audience reached by broadcasters and the accessibility of the media to children.

Pacifica claimed that "indecent" is synonymous with "obscene" or "hard-core"pornography. Otherwise, Pacifica alleged, the government would be entitled to censor whatever it did not feel was morally acceptable.

The Supreme Court refuted this argument by pointing out that under Pacifica's rationale, only obscene or hard-core pornographic material could be prohibited. Such a standard would allow broadcasters virtually unlimited discretion as to what should be broadcast. The Court was not willing to let broadcasters go this far; consequently the *Pacifica* decision restricts the First Amendment rights of broadcasters who wish to transmit non-obscene material.

Finally, the *Pacifica* decision emphasized the narrowness of its holding, and set forth criteria for the prohibition and channeling of offensive broadcasts in the future. The Court noted that its decision only dealt with the FCC's authority to prohibit the broadcast of the Carlin monologue. By requiring that its decision be narrowly construed, the Court may have lessened the chance of its decision being extended to cover other forms of media.

The Court also made it clear that many factors were to be used in determining whether a particular broadcast could be prohibited in the future:

> " ... consideration of a host of variables is required: The time of day ... , the content of the program in which the language is used ... and differences between radio, television and perhaps closed-circuit transmission ..."

By requiring the FCC to look not only at the content of a broadcast, but also the context in which the broadcast was made, the majority in the *Pacifica* case applied what is known as a nuisance law rationale. In this situation, *nuisance law* concerns the channeling of offensive broadcasts rather than prohibiting them.

In the Pacifica case, for example, under a nuisance law rationale, the Carlin monologue might not have been prohibited had it been broadcast late at night instead of in the afternoon when children might be listening. In establishing a nuisance law rationale to deal with offensive broadcasts, the Court was interested more in channeling an offensive broadcast than simply censoring it. The Court's reasoning would still permit the broadcast of some offensive material while at the same time satisfy its major concern, *i.e.* that of preventing the broadcast from reaching children.

Despite the words of limitation, the *Pacifica* decision presents problems for other branches of the media. It is possible that one day the *Pacifica* decision could be extended to prevent the publication of indecent material in newspapers, magazines, and books. These printed works pervade American society, and to a lesser extent, are also available to minors. The same can be said for motion pictures.

Today, I believe the most vulnerable among the media from the implications of this case is cable television. Complaints have been repeatedly filed and reported over the past several years regarding the frequent presentation of R and X rated films on subscription-based movie channels. Pressure is mounting on cable service providers to limit or restrict such offerings, largely due to the very same concerns the Court expressed over the Carlin broadcast on WBAI. ⊙

Editor's Addendum:

In more recent times, the debate over broadcast indecency has continued. In 1987, the FCC issued warnings to KCSB-FM at the University of California at Santa Barbara, KPFK-FM, a Pacifica station in San Francisco, and WYSP-FM, an Infinity

Broadcasting Corp. commercial station in Philadelphia.

Each of these stations was issued a warning for violating the FCC's indecency guidelines. At the same time, the Commission re-affirmed its definitions of obscene and indecent material taken from the earlier *Pacifica* and *Miller* cases. Later that same year, the FCC attempted to completely eliminate a *safe harbor* period. *Safe harbor* is a time period when material defined as indecent may be broadcast if preceded by an appropriate warning announcement. After failing this, the FCC changed the starting time for *safe harbor* from 10 p.m. to 12 Midnight. On appeal, this change was stayed while the court asked the FCC to justify why it chose these specific new hours. In its order, the court reaffirmed the concept of "channeling", restricting the broadcast of indecent material to "normal" bedtime hours for children while maintaining reasonable access for adults.

In 1988, while the FCC was mustering documentation to support its position, conservative members of Congress, led by Senator Jesse Helms of North Carolina, passed a bill which ordered the FCC to implement a 24-hour-per-day ban on the broadcast of indecent material. The bill was attached as a rider to an appropriations measure and was signed by President Ronald Reagan. An immediate appeal stayed the law from taking effect.

The new law also changed things at the FCC. Instead of continuing work to justify the new *safe harbor* time period, the Commission re-directed its efforts in support of the 24-hou-per-day ban. IBS, Pacifica, NFCB, poet Allen Ginsberg and others all filed comments opposing the ban. The only comments in support of the ban came from those with organized religious affiliations or ties to conservative political groups.

Once again, the matter is back in the hands of the court. Meanwhile, the previous *safe harbor* period for the broadcast of indecent material apparently remains in effect. Stations would be wise to have a written policy of their own in place.

For a practical discussion of where things stand today for college radio stations, see *Indecency at the IBS National Convention* by Rick Askoff in this issue. ⊙ *Jeff Tellis*

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Indecency at the IBS National Convention

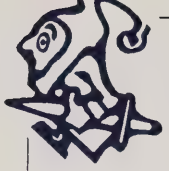
by Rick Askoff

Station delegates who attended the panel on "Indecency in Broadcasting" at the recent IBS National Convention witnessed and participated in a sometimes heated debate over attempts by Congress, the FCC and conservative political groups to enforce a 24-hour-per-day ban on the broadcasting of indecent material. The panelists included Paul McGeady, General Counsel for Morality in Media and Steve Schaffer, of Schwartz, Woods & Miller, a Washington, DC law firm specializing in communications law. Rick Askoff, also an attorney, a former IBS Executive Director and Board member, moderated.

Following a fairly structured format, the session opened with a presentation by Schaffer recapping the history of the FCC's attempts to define indecency and to develop restrictions on indecent broadcasting that stand up to constitutional scrutiny in court. Now, according to Schaffer, the FCC considers indecent "language that describes in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs when there is a reasonable risk that children may be in the audience." Even though the FCC's rules prohibit broadcast of indecent material 24 hours per day, according to Schaffer, those rules have been suspended while the FCC tries to collect enough information to justify a 24-hour-per-day ban. In the meantime, the old rules remain in effect, appearing to allow indecent material to be broadcast after 10 p.m. provided a warning announcement is given.

After Schaffer's opening presentation, McGeady provided a provocative view of his interpretation of the law on indecency. According to McGeady, the definition of "indecent" material is much broader than that contemplated by the FCC for their current rulemaking. Moreover, based on his review of applicable Supreme Court cases, McGeady claimed that broadcast of indecent material is currently unlawful 24 hours per day, even though the FCC has indicated that it cannot enforce such a ban.

After an opportunity for rebuttals by both panelists, it became clear that no consensus could be



reached on a definition of indecency or on when, if at all, it was permissible to broadcast indecent material. Noting that college radio stations often play songs that were primarily political in nature, but expressed in a way that could be defined as indecent, Schaffer expressed grave concerns that broadcasters' First Amendment rights were being "chilled". According to Schaffer, station personnel had better things to do than to spend valuable time debating whether or not a particular song was "indecent." McGeady, on the other hand, objected to being exposed to indecent material against his wishes. At this point, members of the audience, clearly frustrated by the uncertainty surrounding this area, suggested strongly that listeners such as McGeady could avoid indecency merely by turning the dial. McGeady pointed out that the courts have rejected this argument.

Time was reserved at the end of the session for practical advice. Moderator Askoff advised delegates not to blame the panelists for the lack of clear guidelines on indecency, but suggested that audience members obtain some of the FCC publications on indecency that would be handed out at an FCC session following the indecency panel.

Until the legal issues are straightened out, Askoff suggested that students take the following steps to avoid problems:

First, stations should make sure that they have a written policy on indecency. Askoff suggested that, for now, stations would be best advised to incorporate the FCC's definition of indecency in making up such a policy.

Second, station personnel should make sure that there is a clear "chain of command" that leads from on-air personnel, through student management of the radio station, right up to the highest possible level of the school's administration. This is absolutely necessary for student FM stations because the FCC's rules require that a licensee have control over a station. College FM licenses are typically held by the Board of Trustees or comparable body of a college or university. Boards of Trustees usually do not exercise any day-to-day supervision over a student radio station, but the control requirement will be satisfied if it can be shown that the school administration is involved in setting station policy and seeing that the station is well managed.

Third, it is a good idea to have the school administration keyed in on the station's indecency policy. This applies to all stations regardless of FCC licensing status. As Askoff pointed out, if a complaint from a listener comes in it will be much easier to get the school administration's support if they were initially involved in formulating the policy. ⊙

Copies of these FCC materials on indecency are available to IBS member stations upon request.

The Law of Political Broadcasting and Cablecasting: A Political Primer 1984 Edition.

Fact Sheet February 89. *FCC Takes Strong Stance on Enforcement of Prohibition Against Obscene and Indecent Broadcasts.*

Mass Media Bureau Publication 8330-PA. *The Personal Attack Rule and Procedures to be Used in Filing Personal Attack Complaints.*

FCC News October 26, 1989. *Commission Announces Action on 95 Indecency Complaints.*

FCC News October 26, 1989. *Inquiry Begun on Enforcement of 24-Hour Broadcast Indecency Prohibition.*

FCC News August 4, 1987. *FCC Ends Enforcement of Fairness Doctrine.*

Send your request to IBS, Box 592, Vails Gate, NY 12584-0592. Non-member stations and individuals should enclose $5.00 for postage and handling.

Please send us the FCC materials on Indecency. ❑ Not a member station, $5 enclosed.

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Design Strategies

Station Improvement through Documentation

Keeping a college radio station well and growing is big job. Having to make judgment calls without the advantage of personal experience can be tough. We all know that those who do not know the about mistakes of their predecessors are doomed to make those same mistakes themselves.

A college radio station staff member seldom has a tenure of more than four years. If you can review the results of choices made by others in the same circumstances, your choices will be simpler and more successful. Developing a plan that will maintain documentation in all station activitiies will immediately make station management easier, and will help produce progress rather than just change. Though circumstances constantly change, precedence is a great help when it can be studied before similar choices must be made.

Good Documentation is:

- **Written simply**
- **Direct and to the point**
- **Catalogued for easy retrieval**
- **Dated and put in context**
- **Reviewed and maintained**
- **A great investment**

If your station does not have an on-going system for generating consistent records, it will require the efforts of a dedicated individual to get the process organized. The requirements for management and the department documentation can vary dramatically. It follows that the most experienced individuals in the station should contribute to the design process.

Needless record keeping is not our subject. Keeping useless information is a bore and a waste of productive energy. Good documentation is as brief as possible, direct and to the point. Rambling sentences take time to write and more time to decipher. Organizing your record keeping necessitates your understanding both the current era at the station, but more importantly, it needs good expectations of what will be important at the station when your era is remembered only by its documentation.

Building Success from Failures

Building is the key reason for keeping documentation. Building is the process of constructing, one piece at a time. Building is only as good as its foundation and good documentation is a firm foundation for building a great station.

For instance, the engineering documentation should clearly define all of the current hardware, software, wiring schematics, and reasoning for the current arrangements. Manufacturers' manuals and instructions have to be organized and filed with parts lists and memos about equipment operation. A good engineering installation may well be working long after its designer has departed the station. If the engineer's work and subsequent operations are well documented, any succeeding changes and repairs will be made much easier.

The business manager will be able to develop the station's budget and income procedures if the results of earlier planning can be examined. It is as important to know what failed as it is to know what worked before.

The music director can plan the station's music strategies more successfully if the record company listings with their contact names, addresses, and phone numbers are documented with comments about how each of the companies prefer to deal with the station.

Management will find their choices will be better if they carry the support of past successes. When successful campaigns to attract new staff members are documented, following campaigns can be improved still further. If management can study a good record of station-school relations, future decisions for dealing with the school administration will be more sound.

The FCC dictates a few record-keeping duties for those stations holding FCC licenses. If the required records such as quarterly issues / programs lists, logging of weekly EBS tests performed and received, logging of tower light outages, political files, station donors and underwriters can be integrated into other record-keeping, a reliable picture of the station can and will be maintained for the use of future station personnel. It will also help to satisy an FCC inspector should one appear on your doorstep unexpectedly.

Documenting good examples will support future writers of news programs, public service announcemnts, music segues, grant applications, record company letters, and station documentation itself. ⊙ *Richard Beatty*

First Step to the Future

by Scott Lever, Chairperson, WMUA
University of Massachusetts, Amherst

As college radio enters a new decade, it's high time that we begin some meaningful dialogue about the future of this industry. Countless articles begin this way but readers quickly lose interest as the article turns into a thesis about *my* station and how *we* do it *right*, implying that *you* do it *wrong*. I hope to convince station managers that every college radio station is a valid and important component of the college radio industry. I feel strongly that the intolerance for college stations that operate differently and hold different values from one's own station has handicapped the industry's ability to grow. Finally, I offer some suggestions about overcoming this problem on the individual station level and for rethinking the foundations of our industry so that college radio can stop spinning its wheels futilely.

While it's easy to expound the virtues of one approach to station operations over another, we forget that every station feels strongly about its own methods. Ego defenses go up after the first sentence of "The future of college radio is this..." articles and readers prepare to criticize. What is missing in these articles and the reader's mindset is acceptance of college radio stations that operate and hold values different from the reader's own station. For example, I spoke to a DJ from an "alternative experimental" station and he criticized a cross-town "teaching" college radio station associated with a college's communications department. Students I know at the "teaching" station criticize the "experimental" station just as quickly. These two stations are complete opposites and both claim the other station has nothing to do with "real" college radio.

I believe college radio is powerless and divided because its members do not accept one another. If we could only learn to accept stations with different values and methods of operations, we, as an industry, might transcend the obstacles that hold up our progress. How many years must IBS convention go'ers be subject to the block vs. free-form stalemate at the programming panels? The decision about which method is better lies with individual stations. Nothing is accomplished by arguing back and forth because both methods are valid. At the conventions, people battle instead of concentrating their efforts on developing new ideas about programming.

The first step in the process of prodding college radio from its stagnation is for individual stations to become more comfortable and secure with the way they operate. Do you and your station members know the goals and purposes of your radio station? Logic would dictate that in order to operate a radio station on a daily basis, management has to be familiar with the ideas that have shaped operating policy. But many management personnel don't act with their organization's goals and purposes in mind. If stations are to accept other stations, they must first understand and accept themselves.

It has been my experience that when new student managers take up the reins, they feel a certain amount of self-doubt concerning appropriate management practices. The self-doubt of inexperienced and largely unprepared student managers leaves station management two options from which to choose: They can either reject the old modes of operation and reformulate, or accept the status quo. In either case, station management becomes dogmatic and resistant to change, a problem that does not seem to correct itself over time. Currently, when people compare their station to others, the comparisons are most often negative and serve to perpetuate self-doubt. Often insecure managers criticize other stations in order to make themselves and their stations feel more secure. However, comparisons can be useful when they are made to identify similar stations that may have valuable information to offer. Positive comparisons of this nature should be encouraged.

After defining and accepting the radio station's goals and purposes, a second major step toward restoring progress in our industry is developing the means to usefully compare college radio stations. Managers need to compare their station to others in an effort to identify similar stations and learn from them. Policies, guidelines, and constitutions are what college radio stations need to share and compare. Other college stations are a great resource.

The Intercollegiate Broadcasting System is

trying to show individual stations the benefits of working together as an industry. For instance a strong and united college radio industry could affect FCC legislation. Any success now is due to a strong commitment by a few people, not a united industry. I see the lack of cooperation rooted in the organization of the college radio industry. Currently, the industry is addressed at convention panels and in articles as one group, but college radio has grown too large to deal with as a single entity. At those times when college radio has been segmented into manageable sub-groups, the segments were usually based on budget or wattage. This practice has had a chilling effect on industry-wide progress. I think our current stagnation shows that dollars and watts are poor segment choices. They result in management looking to the wrong kinds of stations for ideas.

Instead of merely classifying stations based on budget or wattage, I propose sub-grouping college radio stations based on their goals and aspirations.

Look at what stations want to accomplish and group them by goal, so stations can work together because they are working toward the same goals, not because they both have similar budgets. One segment might be college stations whose primary goal is to educate students in the operation of a radio station. Another possible segment might be college radio stations that serve as alternative entertainment sources.

I believe that classifications based on goals will not only put college radio back on track but also keep the industry progressing because goals will be foremost in mind. It is a self-perpetuating process. As goals are brought to the forefront, they can be continually reevaluated and updated to reflect new directions.

There are too many possible goals to allow a practical number of segments unless we consider only the major goals. I have suggested only two and other managers should use *the Journal of College Radio* to discuss other goals. Perhaps future IBS conventions could reflect this new approach. Additionally, when management writes or talks about methods of operations, they should be careful to identify the segment for which the information might be useful. Most of all, I hope college radio will grow together to face the serious challenges in the years ahead. ⊙

Editor's Note:

By virtue of their diversity, college radio stations have almost defiantly resisted conventional categorization, labeling, or segmentation into a small group of convenient "types". The idea of grouping by station goals is an interesting one which seems worthy of a try.

One of the keys to doing this will be developing a comprehensive but manageable list of goals into which our stations might fit, describing each goal to avoid any ambiguity that often accompanies subjective descriptions.

It's possible that we could try to incorporate this list in this Fall's annual IBS Station Questionnaire, but we'll need to get a lot of feedback from stations to make this work.

Give us your suggested list of goal possibilities with a description of each that should ideally leave little doubt in a station manager's mind which goals may be applicable to their situation. It is likely that there will be some crossover, since many stations pursue multiple goals and purposes.

If we get enough feedback and interest, we will pursue this idea. Let us hear what you think. ⊙

Jeff Tellis

Ten Tips for Landing a Job in Broadcasting

by Holland Cooke, Operations Manager
WTOP News Radio, Washington, DC

Have a Plan

Many applicants make the mistake of simultaneously applying for too many jobs, at stations they know little or nothing about. Their resumés become *junk mail.* Instead of a *shotgun* approach, keep your focus as narrow as a laser beam. Target jobs and stations that can advance your career goals.

Using the Classifieds

There are drawbacks to employment advertising in trade publications. By the time a job opening is finally printed in the *Help Wanted* listings, insiders, referrals, cronies, or friends have had first pick for the job. Few employers find the *Situations Wanted* listings a consistently productive source of qualified applicants.

Local newspaper *Help Wanted* listings reach print much more quickly than the trades. Do some of your own networking with casual inquiries to veteran news department personnel. The world of news broadcasting is small enough to allow job possibilities to be a topic of gossip. Any leads from this source should be researched for accuracy on an informal basis.

The Audition Has Begun

From the very first moment you make contact, your prospective employer is forming an opinion about you. Make sure everything you submit is done as well as possible. Typos, spelling errors, smudges, etc. all produce a negative impression. Double-check the spelling of your prospective employer's name, the station's address, as well as all other details. Be sure your own name, address, and telephone number are on every page and on every tape you submit.

The Cover Letter

Start your letter with "Dear Mr. Smith" or "Dear Ms. Jones." If you do not know the name of the person responsible for hiring, you have not done enough research into the station and its staff. Your letter should be only one page long and consist of short, concise paragraphs. Be specific about the fact that you are looking for work and why you are applying to that particular station. Tell them when you will call to schedule an interview and then call them as promised.

Your Resumé

Again, cut it down to one page. If your own writing and editing skills are not up to the job, get professional help. Professional resumé writers know how to present your experience and skills clearly, directly, and in a positive light.

References

Do not offer *references upon request.* Assume your prospective employer is too busy to take the time to request references. List your references in your resumé. Don't be surprised if a previous employer you did not list as a reference is contacted. The world of broadcasting is rather small and tight.

Audition Tapes

Include only your best work. Never represent the material on your tape as anything less. When your prospective employer presses the Play button, your work should be the first thing that is heard. Omit an opening monologue and any work of others.

The Job Interview

Be prepared. Anticipate questions that may be asked. Be ready to summarize your strengths and weaknesses. Be on time. Dress appropriately for the interview. Ask good questions. Ask for the job. Ask when an applicant will be selected and what you might do to enhance your candidacy.

Negotiating

Discuss salary last. Do your homework first. What is the cost of living in the area? What are your financial obligations? What are the salaries for comparable positions in the area? When the salary is discussed, be sure to ask about when and how your performance will be reviewed. Don't forget to ask about overtime, health insurance, vacations, and moving expenses.

Make Your First Day a Great Day

You get one chance to make a good first impression.

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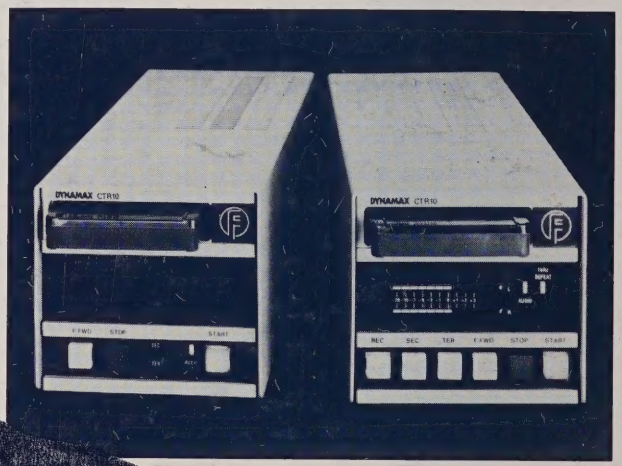

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